**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**
**DISADVANTAGED BUSINESS ENTERPRISE PROVISIONS**

I. General

The respondents to the Request for Proposal (RFP) shall cooperate with the Authority in implementing the contract obligations concerning Disadvantaged Business Enterprise (DBE) utilization in this contract. The Contractor shall also cooperate with the Authority and the Federal government in reviewing the Contractor's activities relating to this Provision. This Provision is in addition to all other equal opportunity employment requirements of this contract. The Authority shall make all determinations of compliance or non-compliance with the requirements of this Provision, and the appropriate consequences of non-compliance. Any questions with regards to this Provision should be directed to the Office of Diversity and Civil Rights at (617) 222-3305 or via fax at (617) 222-3263.

II. Stated Goal

The "stated goal" is those elements of work under this contract performed by qualified Disadvantaged Business Enterprises for amounts totaling not less than value of the established DBE goal. Failure to meet the stated goal at the time of proposal submittal date may render the proposal non-responsive (in the absence of Good Faith Efforts as stipulated in Section IV below and by the regulations under 49 CFR Part 26.53).

III. Proposal Submissions

Each respondent, as part of their RFP submission, must submit the following:

a. A completed Schedule for Participation of Disadvantaged Business Enterprises form, listing those qualified DBEs with which the respondent intends to contract for the performance of portions of the work under the contract, specifying the agreed price to be paid to each Disadvantaged Business Enterprise for work, identifying in detail the contract items or parts to be performed by each Disadvantaged Business Enterprise, identifying the North American Industry Classification System (NAICS) Code(s) for each DBE showing they are certified in the NAICS Code(s) for the work they will be performing, including a proposed timetable for the performance or delivery of the contract item, and providing other information as required by the Schedule. If a DBE has cause to subcontract any part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

   In addition, if a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on

the basis of normal industry practice for the type of work involved, you must presume that is not performing a commercially useful function. The Authority will count expenditures to a DBE contractor toward the DBE goal only if the DBE is performing a commercially useful function on that contract.

b. A completed original Letter of Intent signed by each DBE listed in the Schedule. Any future DBE changes and/or substitutions of DBE firms require written approval of the Authority. (See Attachment F to Contract Terms and Conditions, Article II- General Provisions.)

For the purpose of this contract, the MBTA will accept only DBEs who are:

a. Certified, at the time of Qualifications (SF-330) submittal, by the Massachusetts Supplier Diversity Office (SDO).

In addition, each DBE must execute an original affidavit stating that there has not been any change in its status since the date of its last certification. (See Attachment D to Contract Terms and Conditions, Article II-General Provisions.)

**A respondent must attach to its DBE Schedule a copy of the DBE's most recent certification letter or document plus the original signed affidavit and the original signed letter of intent.**

Failure to submit requested information may render your proposal non-responsive.

The total price for work to be performed by the DBE(s) identified in each respondent's Schedule for Participation must be sufficient to fulfill the stated goal.

The DBE participation documentation and forms shall be incorporated into the Agreement to be entered into by the Authority and the successful respondent.

IV. Responsiveness of Proposal

In the event the work listed on the Schedule for Participation is not sufficient to fulfill the stated goal, the Authority will conduct additional review. The respondent must demonstrate to the satisfaction of the Authority that it has made reasonable efforts to contact and negotiate with DBEs in an attempt to subcontract work.

Respondents who do not demonstrate, in writing, to the satisfaction of the Authority that they have made reasonable efforts to subcontract with the qualified DBEs in the participation of this contract may be considered non-responsive.

Reasonable Efforts

To demonstrate sufficient reasonable efforts to meet the DBE contract goal, the

respondent shall document the steps taken to obtain DBE participation in accordance with 49 CFR Part 26 Appendix A. Reasonable efforts will be viewed in light of the following and with 49 CFR Part 26 Appendix A:

a. Documented communication with the Authority's DBE Coordinator. (Questions on proposal requirements, subcontracting opportunities, appropriate certification, will be addressed in a timely fashion).

b. Attendance at a pre-proposal meeting, if any, scheduled by the Authority. (In addition to overall specification questions, the Authority will inform the respondent of DBE subcontracting opportunities).

c. The respondent's own advertisement for DBE involvement in general circulation media, trade association publication(s), and minority-focus media at least 20 days before proposals are due. If 20 days are not available, publication for a shorter reasonable time is acceptable.

d. Written notification to DBEs, encouraging participation in the proposed contract.

e. Efforts made to identify specific portions of the work that might be performed by DBEs in order to increase opportunities for maximum DBE participation.

f. Specific efforts to negotiate with DBEs for elements of the contract, including a minimum:

    1. The names, addresses and telephone numbers of DBEs that were contacted.

    2. A description of the information provided to DBEs regarding the specifications and/or proposals for portions of the work.

    3. Where applicable, establishing schedules which will encourage participation by DBEs.

**If DBEs are unavailable, the Disadvantaged Business Enterprise Unavailable Certification Form (Attachment E) must be submitted with each respondent's proposal.**

V. Continued Compliance

The Authority shall monitor the compliance of the successful respondent with the requirements of this Provision during the life of the contract.

The successful respondent shall permit the Authority to have access to necessary records,

and to examine information as the Authority deems appropriate for the purpose of investigating and determining compliance with this provision, including, but not limited to, records of expenditures, invoices and contracts between the successful respondent and other DBE parties entered into during the life of the contract.

VI. Sanctions for Violations

If at any time the Authority has reason to believe that the successful respondent is in violation of its obligations under this Provision, or has otherwise failed to comply with this Provision, the Authority may, in addition to pursuing any other available legal remedy, commence proceedings which may include sanctions. Such sanctions may include, but are not limited to, one or more of the following:

(1) the suspension of any payment or part due to the successful respondent until such time as the issues concerning the successful respondent's compliance are resolved;

(2) the termination or cancellation of the contract in whole or in part unless the successful respondent is able to demonstrate within a reasonable time its compliance with the terms of this provision. In addition, the Authority will consider documented history of non-compliance with DBE requirements during review of selection results, including overall valuation of a respondent's responsiveness and responsibility.

**ATTACHMENT C**
**SCHEDULE OF PARTICIPATION**
**OF**
**DISADVANTAGED BUSINESS ENTERPRISE**

**Project No.** _____
**Location:** _____

| Name of Disadvantaged Business | Address | Type of Work and Contract Items or Parts Thereof to be Performed | NAICS Code(s) | Projected Start and Finish Date for Work | Agreed Price |
|---|---|---|---|---|---|
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**Name of Respondent:** _____

**A copy of the DBE's most recent certification and an original affidavit must be attached to this schedule.**

**ATTACHMENT D**
**DBE AFFIDAVIT**

Form C No. _____ MBTA Contract No._____

State of _____ (Date) _____

County of _____ S.S.

The undersigned being duly sworn, deposes and says that he/she is the

_____
(sole owner; partner; president; treasurer; or other duly authorized official of a corporation)

of _____
(Name of DBE)

and certifies that since the date of its certification by Massachusetts Supplier Diversity Office (SDO) to perform work in the following NAICS Code(s):

_____
NAICS Code(s)

The certification has not been revoked nor has it expired nor has there been any change in the minority status of

_____
(Name of DBE)

_____
(Signature and Title of
Person Making Affidavit)

Sworn to before me this _____ day of _____, 20_____.

_____
(Notary Public)

Note: The Bidder must attach the DBE's most recent certification letter or document to this affidavit.

**ATTACHMENT E**
**DBE**
**UNAVAILABLE CERTIFICATION**

I, _____ (name), _____ (title)

of _____ (prime bidder), certify that on _____ (date)

I contacted the following Disadvantaged Business Enterprise to obtain an estimate for work items to be performed on MBTA Contract No. _____.

| Disadvantaged Respondent | Work Items Sought |
|---|---|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

To the best of my knowledge and belief, said Disadvantaged Business Enterprise was unavailable for work on this project, or unable to prepare an estimate for the following reason(s):

Signature: _____ Date: _____

_____ was offered an opportunity to respond on above-referenced work on _____ by _____, (name of business enterprise)

_____ (Date) _____ (Source)

The above statement is a true and accurate account of why I did not submit an estimate on this project.

_____
Signature of DBE Authorized Representative

_____
Title

_____
Date

A separate unavailability certification form should be completed for each DBE.

## ATTACHMENT F
## DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

# LETTER OF INTENT

MBTA Contract No. _____
Description: _____

To: _____
(Name of Prime Respondent)

The undersigned intends to perform work in connection with the above project as (check one):

_____ individual _____ DBE _____ partnership _____ joint venture

The Disadvantaged Business status of the undersigned is confirmed

1 on the reference list of Disadvantaged Business Enterprises dated _____ or
2 on the attached Disadvantaged Business Enterprise identification Statement.

The undersigned is prepared to perform the following work in connection with the above project. (Specify in detail particular work items or parts thereof to be performed and specify for each work item the applicable NAICS code fro which the undersigned is certified):

_____

_____

_____

_____

At the following price: _____

You have projected the following commencement date for such work, and the undersigned is projecting completion of such work as follows:

| Projected **Items** | Projected **Commencement Date** | **Completion Date** |
|---|---|---|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

The above work will not be sublet to a non-Disadvantaged Business Enterprise at any tier. The undersigned will enter into a formal agreement for the above work with you, conditioned upon your execution of a contract with the MBTA.

Date _____ _____
Name of Disadvantaged Business Enterprise

By Authorized Representative _____